

*see also*30
4/23/01
JRIN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIAM. ASH-SHARIEF AL'ASKARI,
Plaintiff

vs.

KATHLEEN HAWKES, et. al.,
DefendantsCIVIL ACTION NO. 1:CV-00-1449
(Judge Caldwell)
(Magistrate Judge Smyser)FILED
HARRISBURG, PAO R D E R

APR 20 2001

MARY E. D'ANDREA, CLERK
PER *[Signature]* DEPUTY CLERK

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

By order of April 10, 2001, we adopted the magistrate's report and recommendation and granted Defendants' motion to dismiss Plaintiff's Bivens complaint for failure to exhaust administrative remedies pursuant to 42 U.S.C. § 1197e(a). On April 10, 2001, Plaintiff requested we hold in abeyance our decision on the magistrate's report because the United States Supreme Court has granted certiorari to Booth v. Churner, 206 F.3d 289 (3d Cir. 2000). Because Plaintiff's request was filed after our Order, we will treat his request as a motion for reconsideration.

Plaintiff asserts that any decision by the Court regarding Booth would impact the magistrate judge's reliance on Nyhuis v. Reno, 204 F.3d 65 (3d Cir. 2000). However, the Supreme Court granted certiorari in Booth to decide whether a prisoner

must exhaust administrative remedies when the prisoner is seeking only monetary damages and monetary damages are not available through the administrative process. In contrast, Plaintiff is also seeking declaratory judgment and injunctive relief. Booth would not impact the magistrate judge's reliance on Nyhuis and Plaintiff must still seek relief through the administrative process.

Accordingly, this 20th day of April, 2001, it is ordered that Plaintiff's motion for reconsideration, filed April 10, 2001 (Doc. No. 28), is denied.



William W. Caldwell
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

* * MAILING CERTIFICATE OF CLERK * *

April 20, 2001

Re: 1:00-cv-01449 Al'Askari v. Hawkes

True and correct copies of the attached were mailed by the clerk to the following:

M. Ash-Sharief Al'Askari
FCI-ALLENWOOD
34819-066
P.O. Box 2000
White Deer, PA 17887

Matthew Edward Haggerty, Esq.
Office of the U.S. Attorney
309 Federal Building
Scranton, PA 18501

cc:		
Judge	()	() Pro Se Law Clerk
Magistrate Judge	()	() INS
U.S. Marshal	()	() Jury Clerk
Probation	()	
U.S. Attorney	()	
Atty. for Deft.	()	
Defendant	()	
Warden	()	
Bureau of Prisons	()	
Ct Reporter	()	
Ctroom Deputy	()	
Orig-Security	()	
Federal Public Defender	()	
Summons Issued	()	with N/C attached to complt. and served by:
		U.S. Marshal () Pltf's Attorney ()
Standard Order 93-5	()	
Order to Show Cause	()	with Petition attached & mailed certified mail
		to: US Atty Gen () PA Atty Gen ()
		DA of County () Respondents ()
Bankruptcy Court	()	
Other	()	

MARY E. D'ANDREA, Clerk

DATE:

4-20-01

BY:

GTJ

Deputy Clerk